

AMENDED IN ASSEMBLY JUNE 21, 2005

AMENDED IN SENATE MAY 27, 2005

AMENDED IN SENATE APRIL 13, 2005

SENATE BILL

No. 426

Introduced by Senator Simitian

February 17, 2005

An act to add Article 2 (commencing with Section 25571) to Chapter 6.5 of Division 15 of the Public Resources Code, ~~and to amend Sections 1002 and 1003 of the Public Utilities Code,~~ relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 426, as amended, Simitian. State Energy Resources Conservation and Development Commission: liquified natural gas plants.

The existing Warren-Alquist State Energy Resources Conservation and Development Act establishes the State Energy Resources Conservation and Development Commission (~~energy commission~~) and requires the ~~energy~~ commission to prepare a biennial integrated energy policy report. The act requires the ~~energy~~ commission to certify sufficient sites and related facilities that are required to provide a supply of electricity sufficient to accommodate projected demand for power statewide. The act grants the ~~energy~~ commission the exclusive authority to certify any stationary or floating electrical generating facility using any source of thermal energy, with a generating capacity of 50 megawatts or more, and any facilities appurtenant thereto.

~~Existing law authorizes the Public Utilities Commission (CPUC) to regulate public utilities, including electrical corporations and gas~~

~~corporations. The existing Public Utilities Act prohibits any electrical corporation or gas corporation from beginning the construction of, among other things, a line, plant, or system, or of any extension thereof, without having first obtained from the CPUC a certificate that the present or future public convenience and necessity require or will require that construction (certificate of public convenience and necessity). The act requires that the CPUC consider certain factors in determining whether to issue a certificate of convenience and necessity, but requires that the issuance of a certificate by the energy commission for an electrical generating facility and facilities appurtenant thereto, is conclusive as to all matters determined thereby when the CPUC is determining whether to issue a certificate of public convenience and necessity.~~

This bill would require the energy commission to make a liquefied natural gas (LNG) needs assessment study that assesses demand and supply for natural gas and alternatives to natural gas to meet energy demands, and to determine the number of LNG terminals, if any, needed to meet the state's projected natural gas demand. The bill would require the LNG needs assessment study, upon the filing of an application for a permit to construct or operate an LNG terminal, to be completed no later than November 1, 2006, and incorporated into its biennial integrated energy policy report. The bill would require the energy commission to hold public hearings to consider the results of the LNG needs assessment study and to provide an opportunity for public comment. All costs of the ~~Energy Commission~~ *commission* for the implementation of these requirements, including costs for any temporary personnel or consultants, would be funded from fees charged to persons or entities applying for permits to ~~build~~ *construct* and operate a LNG terminal according to mechanisms that would be added by SB 1003 of the 2005-06 Regular Session. The bill would require the ~~energy~~ commission to compare and rank every site for which an application for a permit to ~~build~~ *construct* and operate a LNG terminal has been filed, based upon certain criteria and in consultation with specified entities, and would require the ~~energy~~ commission to issue permits only according to the rank order or priority, and as necessary. The bill would authorize the ~~energy~~ commission to issue a permit to ~~build~~ *construct* and operate a LNG terminal only if it determines that the technology chosen for a particular site will have the least adverse public health, safety, and environmental impacts then feasible. The bill would provide that these

requirements are applicable to every LNG terminal to be constructed or operating in California, irrespective of whether an application has been submitted for the construction or operation of the terminal to any federal, state, or local entity prior to the operative date of the bill.

~~This bill would require that with respect to any LNG terminal that requires a certificate of public convenience and necessity from the CPUC, that no certificate be issued unless the LNG terminal has first obtained a permit from the energy commission, and that the issuance of a permit by the energy commission is conclusive as to all matters determined thereby when the CPUC is determining whether to issue a certificate of public convenience and necessity. The bill would make other conforming changes.~~

The bill would provide that it shall only become operative if SB 1003 of the 2005-06 Regular Session is also enacted and becomes operative on or before January 1, 2006.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) It is the policy of the state to meet California's energy
- 4 growth by optimizing energy conservation and resource
- 5 efficiency and by reducing per capita demand to ensure a clean,
- 6 safe, and reliable supply of energy for California.
- 7 (b) It is the policy of the state to be sensitive to the impact of
- 8 the state's energy policy on global climate change and
- 9 environmental impacts in host countries that export natural gas.
- 10 (c) It is the policy of the state to accelerate the use of
- 11 renewable energy resources wherever feasible and to ensure a
- 12 diverse and affordable portfolio of fuel sources to minimize the
- 13 opportunity for supply interruptions.
- 14 (d) The state has a lead role in decisions regarding the siting
- 15 and design of new onshore and offshore infrastructure for the
- 16 importation of liquefied natural gas that results in impacts to
- 17 public health, safety, and the environment.
- 18 (e) Laws and regulations enacted by the state to address
- 19 consumer, *community*, public health, safety, and environmental
- 20 impacts of new onshore and offshore imported liquefied natural

1 gas infrastructure, where more protective, should not be
2 preempted by weaker, less protective federal laws and
3 regulations.

4 (f) Decisions regarding the importation of liquefied natural gas
5 should be based on a comprehensive review of current and
6 projected natural gas supply and demand in California, and
7 alternative sources of supply.

8 (g) Construction and operation of liquefied natural gas onshore
9 and offshore infrastructure may commence after completion of a
10 rigorous evaluation that analyzes the need for liquefied natural
11 gas and the relative merits of pending and future proposals with
12 respect to business, consumer, *community*, public health, safety,
13 and environmental impacts.

14 SEC. 2. Article 2 (commencing with Section 25571) is added
15 to Chapter 6.5 of Division 15 of the Public Resources Code, to
16 read:

17
18 Article 2. Evaluation of Potential Liquefied Natural Gas
19 Terminals and Alternatives
20

21 25571. (a) The commission shall not issue a permit to
22 construct and operate a liquefied natural gas terminal, except in
23 accordance with this article.

24 (b) The commission shall issue a permit, or more than one
25 permit, to construct and operate a liquefied natural gas terminal,
26 only according to the rank order priority established in this article
27 and as necessary to further the purposes of this chapter.

28 25571.2. (a) The commission shall make a study of the need
29 for liquefied natural gas terminals to meet the state's energy
30 demands, to be known as the LNG Needs Assessment Study. The
31 study shall assess all of the following:

32 (1) The future demand for natural gas in California.

33 (2) The future supply of natural gas in California available
34 from domestic production and imported into California through
35 interstate pipelines, supply available from domestic production
36 within California, and supply available from foreign production
37 and imported into California through international pipelines from
38 Mexico and Canada, including any liquefied natural gas terminal
39 proposed to be built outside the state that would be the source for
40 natural gas imported into the state.

(3) All supplemental sources of natural gas and natural gas alternatives that can reasonably be expected to be available to meet the projected demand for natural gas, including, but not limited to, conservation and energy efficiency programs, steps to increase production and importation of natural gas from other states, Mexico, and Canada, steps to increase available supply from federally owned or federally regulated supplies, and steps to increase energy supplies available from renewable energy resources, including solar, wind, geothermal, and biomass.

(b) The LNG Needs Assessment Study shall determine the number of liquefied natural gas terminals, if any, needed to meet the state's projected natural gas demand and whether it is economically feasible to meet the state's future natural gas needs without ~~building~~ constructing a liquefied natural gas terminal.

(c) (1) The commission shall not commence the LNG Needs Assessment Study until an application has been submitted for approval.

(2) The LNG Needs Assessment Study shall, upon filing of an application, be commenced by January 1, 2006, shall be completed no later than November 1, 2006, and shall be incorporated into the integrated energy policy report prepared pursuant to Section 25302.

(d) The commission shall hold at least two public hearings to consider the results of the LNG Needs Assessment Study and to provide an opportunity for public comment. At least one public hearing shall be held in any county that is the proposed site for which an application for a permit has been filed with the commission, to ~~build~~ construct and operate a liquefied natural gas terminal. *If the terminal is not proposed to be located within a city or county, the hearings shall be in the city or county nearest the proposed location.*

(e) All costs incurred by the commission for the implementation of this article, including costs for any temporary personnel or consultants, shall be funded by fees charged to persons or entities applying for permits to ~~build~~ construct and operate a liquefied natural gas terminal.

25571.4. (a) The commission shall compare and rank every site for which an application for a permit has been filed with the commission to ~~build~~ construct and operate a liquefied natural gas

1 terminal. The comparison and ranking shall be based on the
2 following criteria:

3 (1) The extent to which the facility is necessary to meet the
4 future energy needs of California.

5 (2) The extent to which environmentally less damaging
6 alternatives are feasible to meet California's future energy needs.

7 (3) The extent to which a no-build alternative is or is not
8 economically feasible for California's economy.

9 (4) All effects on the environment, public health, safety, and
10 welfare, including any disproportionate negative effects upon
11 low-income or disadvantaged communities.

12 (5) *The extent to which the facility, including supporting*
13 *infrastructure and resulting ship and air traffic, could impact*
14 *upon national security, along with any cumulative impacts upon*
15 *national security that could result from multiple facilities.*
16 *Potential impacts on national security include any effect that the*
17 *facility may have on the land, sea, and airspace identified by the*
18 *Department of Defense, any of its component armed services, or*
19 *the United States Coast Guard, for conducting operations, for*
20 *conducting training, or for the development and testing of*
21 *weapons, sensors, and tactics.*

22 (6) The economic merits of the respective proposals,
23 including, but not limited to, the reliability and sustainability of
24 the proposed supply.

25 (b) In conducting the comparison and ranking, the commission
26 shall consult with all entities of local government that would be
27 affected by a proposed liquefied natural gas terminal, the
28 California Coastal Commission, the State Lands Commission, the
29 Public Utilities Commission, the Office of Emergency Services,
30 the Department of Fish and Game, the State Water Resources
31 Control Board, the affected California regional water quality
32 control board, the State Air Resources Board, the Federal Energy
33 Regulatory Commission, *the Department of Defense and its*
34 *component armed services*, and the United States Coast Guard.

35 25571.6. The commission may issue a permit to ~~build~~
36 *construct* and operate a liquefied natural gas terminal only if it
37 determines, based on the record, that among the available
38 technologies for producing natural gas through a liquefied natural
39 gas process, that the technology chosen for a particular site will

1 have the least adverse public health, safety, and environmental
2 impacts then feasible.

3 ~~25571.8. (a) The commission shall be the lead agency for~~
4 ~~issuing any approval necessary for the construction or operation~~
5 ~~of a liquefied natural gas terminal in California.~~

6 ~~(b) This article does not limit any existing authority of state~~
7 ~~government pursuant to Division 13 (commencing with Section~~
8 ~~21000).~~

9 ~~(c)~~

10 ~~(b) The requirements of this article are applicable to every~~
11 ~~liquefied natural gas terminal to be constructed or operating in~~
12 ~~California, irrespective of whether an application has been~~
13 ~~submitted for the construction or operation of the terminal to any~~
14 ~~federal, state, or local entity prior to the operative date of this~~
15 ~~article.~~

16 ~~SEC. 3. Section 1002 of the Public Utilities Code is amended~~
17 ~~to read:~~

18 ~~1002. (a) The commission, as a basis for granting any~~
19 ~~certificate pursuant to Section 1001 shall give consideration to~~
20 ~~the following factors:~~

21 ~~(1) Community values.~~

22 ~~(2) Recreational and park areas.~~

23 ~~(3) Historical and aesthetic values.~~

24 ~~(4) Influence on environment, except that in the case of any~~
25 ~~line, plant, or system or extension thereof located in another state~~
26 ~~which will be subject to environmental impact review pursuant to~~
27 ~~the National Environmental Policy Act of 1969 (Chapter 55~~
28 ~~(commencing with Section 4321) of Title 42 of the United States~~
29 ~~Code) or similar state laws in the other state, the commission~~
30 ~~shall not consider influence on the environment unless any~~
31 ~~emissions or discharges therefrom would have a significant~~
32 ~~influence on the environment of this state.~~

33 ~~(b) With respect to any thermal powerplant or electrical~~
34 ~~transmission line for which a certificate is required pursuant to~~
35 ~~the provisions of Division 15 (commencing with Section 25000)~~
36 ~~of the Public Resources Code, no certificate of public~~
37 ~~convenience and necessity shall be granted pursuant to Section~~
38 ~~1001 without such other certificate having been obtained first,~~
39 ~~and the decision granting such other certificate shall be~~
40 ~~conclusive as to all matters determined thereby and shall take the~~

1 place of the requirement for consideration by the commission of
2 the four factors specified in subdivision (a) of this section.

3 ~~(e) With respect to any liquefied natural gas terminal for~~
4 ~~which a permit is required pursuant to the provisions of Article~~
5 ~~6.5 (commencing with Section 25570) of Division 15 of the~~
6 ~~Public Resources Code, no certificate of public convenience and~~
7 ~~necessity shall be granted pursuant to this chapter without a~~
8 ~~permit having been obtained first, and the decision granting the~~
9 ~~permit shall be conclusive as to all matters determined thereby~~
10 ~~and shall take the place of the requirement for consideration by~~
11 ~~the commission of the four factors specified in subdivision (a) of~~
12 ~~this section.~~

13 SEC. 4. ~~Section 1003 of the Public Utilities Code is amended~~
14 ~~to read:~~

15 ~~1003. Every electrical and every gas corporation submitting~~
16 ~~an application to the commission for a certificate authorizing the~~
17 ~~new construction of any electric plant, line, or extension, or gas~~
18 ~~plant, line, or extension, not subject to the provisions of Chapter~~
19 ~~6 (commencing with Section 25500) or Chapter 6.5~~
20 ~~(commencing with Section 25570) of Division 15 of the Public~~
21 ~~Resources Code, shall include all of the following information in~~
22 ~~the application in addition to any other required information:~~

23 ~~(a) Preliminary engineering and design information on the~~
24 ~~project. The design information provided for thermal electric~~
25 ~~plants shall include preliminary data regarding the operating~~
26 ~~characteristics of the proposed plant, including, but not limited~~
27 ~~to, the annual capacity factor, availability factor, and the heat rate~~
28 ~~for each year of the useful life of the plant, line, or extension.~~

29 ~~(b) A project implementation plan showing how the project~~
30 ~~would be contracted for and constructed. This plan shall show~~
31 ~~how all major tasks would be integrated and shall include a~~
32 ~~timetable identifying the design, construction, completion, and~~
33 ~~operation dates for each major component of the plant, line, or~~
34 ~~extension.~~

35 ~~(c) An appropriate cost estimate, including preliminary~~
36 ~~estimates of the costs of financing, construction, and operation,~~
37 ~~including fuel, maintenance, and dismantling or inactivation after~~
38 ~~the useful life of the plant, line, or extension.~~

39 ~~(d) A cost analysis comparing the project with any feasible~~
40 ~~alternative sources of power. The corporation shall demonstrate~~

1 the financial impact of the plant, line, or extension construction
2 on the corporation's ratepayers, stockholders, and on the cost of
3 the corporation's borrowed capital. The cost analyses shall be
4 performed for the projected useful life of the plant, line, or
5 extension, including dismantling or inactivation after the useful
6 life of the plant, line, or extension.

7 (e) A design and construction management and cost control
8 plan which indicates the contractual and working responsibilities
9 and interrelationships between the corporation's management
10 and other major parties involved in the project. This plan shall
11 also include a construction progress information system and
12 specific cost controls.

13 ~~SEC. 5.—~~

14 *SEC. 3.* This act shall only become operative if Senate Bill
15 1003 of the 2005-06 Regular Session is also enacted and
16 becomes operative on or before January 1, 2006.